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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MIDVALLEY RENTAL & DETAILING,  
LLC,

Plaintiff, Cross-Defendant and  
Appellant,

v.

WICHITA & WHITE OAK  
ASSOCIATES, LTD.,

Defendant, Cross-Complainant and  
Respondent.

B203508

(Los Angeles County  
Super. Ct. No. LC073333)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Richard B. Wolfe, Judge. Affirmed.

Freeman, Freeman & Smiley, Steven E. Young and Azadeh Allayee for  
Plaintiff, Cross-Defendant and Appellant.

Larry A. Rothstein and Paul R. Torre for Defendant, Cross-Complainant  
and Respondent.

## INTRODUCTION

Plaintiff and cross-defendant MidValley Rental & Detailing, LLC (MidValley) appeals from the judgment against it entered after a trial to the bench. MidValley challenges the trial court's interpretation of a commercial ground lease (the ground lease) between it and Wichita & White Oak Associates, Ltd. (Wichita). At issue is whether the trial court properly ruled that income from a billboard on the real property belonged to the property owner, Wichita, and not to MidValley as tenant of the subject property. For reasons different than those given by the trial court, we hold that the billboard and the rents flowing from it belong to Wichita. Accordingly, we affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

Wichita, a limited partnership,<sup>1</sup> is the owner of approximately 50,000 square feet of land at the southwest corner of Sherman Way and White Oak Avenue in Van Nuys, California (the property). Wichita's sole asset, the property consists of three contiguous parcels, from east to west, referred to as Lots 1, 2, and 3. Lots 1 and 2 are bisected into north and south parcels, called Lots 1-N and 1-S, and 2-N and 2-S. Lot 3 lies to the south of Lots 1-S and 2-S.

In September 2000, Wichita agreed with its then tenant on Lot 1, Aztec Rent-A-Car Company (Aztec), that in lieu of a rent increase, Wichita could lease a portion of the property demised to Aztec for a billboard. In October 2000, Wichita entered into a 20-year lease with Summit Media, under which Summit rented from Wichita six square feet of land on the northwest corner of Lot 1-N, demised to Aztec, to construct and maintain a billboard (the billboard lease). The billboard lease identified Summit as the owner of the sign and Wichita as the owner and lessor of the real estate. The billboard lease warrants that Wichita "has the full authority to enter into this Lease, and that it was not restricted, *leased*, or impaired

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<sup>1</sup> Louis Reeves is Wichita's general partner and his wife Elsie Reeves, daughter Rebecca Horine, and son Timothy Reeves are Wichita's limited partners.

the Real Estate in any fashion that would make this Lease unenforceable by Lessee.” (Italics added.) Summit began posting advertisements on the billboard in early 2002. Wichita has been collecting rent from Summit under the billboard lease since 2000.

MidValley<sup>2</sup> succeeded to Aztec’s interests in February 2002 under the terms and conditions of the Aztec lease. Having become a tenant of a portion of the property in 2002, MidValley entered into the ground lease with Wichita covering the entire property, effective November 2002 for a term of 25 years. Pursuant to the ground lease, MidValley has paid taxes on the entire property. The ground lease between Wichita and MidValley is silent as to the billboard, the billboard lease with Summit, and the income derived therefrom.

In April 2003, MidValley negotiated a sublease with Southern California Food Services Corporation (SoCal Food) under which the latter would construct a Wendy’s Restaurant on the property. In late April 2003, MidValley informed Wichita that SoCal Food might want the billboard removed. Wichita declined to remove the billboard because Wichita was receiving income from it. MidValley did not object to Wichita’s position. Thus, as of late April 2003, MidValley voiced nothing to indicate it believed it had any right or interest in the billboard or its income.

In October 2003, Wichita, MidValley, and SoCal Food entered into a Consent, Non-Disturbance, and Attornment Agreement (CNDA) that recognized SoCal Food’s lease with MidValley. With particular relevance, the CNDA recites that Wichita “is also the lessor under that certain Summit . . . Lease [the billboard lease].” Wichita covenanted in paragraph 4E of the CNDA to assure Summit’s compliance with the advertising restrictions of the Billboard Lease.

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<sup>2</sup> At the time the lease was executed, MidValley’s principal was Anthony Desa. MidValley is now owned by Alladin Premji, its current manager and sole member.

Sometime in the fall of 2005, after Alladin Premji took over MidValley, he invited the owners of Wichita to tea. During that visit, Premji “just touched on the matter” of the income from the billboard. Wichita responded the following week that the billboard’s rent belonged to Wichita.

In December 2005, MidValley initiated the instant action by filing a complaint alleging, with relevance here, that Wichita breached the ground lease with MidValley by refusing to permit MidValley to receive any rental income from the billboard. MidValley sought a declaration about the respective rights under its ground lease to recover past rent from Wichita’s billboard lease with Summit.<sup>3</sup> Wichita filed a cross-complaint seeking rescission and reformation of the ground lease, declaratory relief, and damages for conversion and breach of contract.

At trial, the parties stipulated that the current rental income from the billboard lease is \$1,350 per month. The billboard lease generated rental income to Wichita of \$63,002 between November 1, 2002 and May 31, 2007. The parties also agreed that the ground lease’s legal description did not include Lot 3 but that Lot 3 was included in the property demised by the ground lease.

In its 39-page statement of decision, the court ruled that because the ground lease did not contain an express provision concerning the billboard, it did not transfer the billboard lease or the rent therefrom to MidValley. Crucial to the court’s ruling is the finding that the billboard is not a fixture. In reaching its conclusions, the trial court admitted testimony from more than 10 witnesses involved in negotiating the ground lease over 10 days of trial.

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<sup>3</sup> MidValley also alleged other causes of action but has not appealed from the adverse rulings with respect to those causes of action.

## DISCUSSION

### 1. *Standard of review*

“The rules governing the role of the court in interpreting a written instrument are well established. The interpretation of a contract is a judicial function. [Citation.] In engaging in this function, the trial court ‘give[s] effect to the mutual intention of the parties as it existed’ at the time the contract was executed. [Citation.] Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract’s terms. [Citations.]

“The court generally may not consider extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict the clear and unambiguous terms of a written, integrated contract. [Citations.] Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous. [Citations.]

“When the meaning of the words used in a contract is disputed, the trial court engages in a three-step process. First, it provisionally receives any proffered extrinsic evidence that is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. [Citations.] If, in light of the extrinsic evidence, the language is reasonably susceptible to the interpretation urged, the extrinsic evidence is then admitted to aid the court in its role in interpreting the contract. [Citations.] When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law. (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 394 [interpretation of written instrument solely a judicial function ‘when it is based on the words of the instrument alone, when there is no conflict in the extrinsic evidence, or a determination was made based on incompetent evidence’]; *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865- 866.) This is true even when the undisputed extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation. [Citations.] If, however, there is a conflict in the extrinsic evidence, the factual conflict is to be resolved by the jury. [Citations.]”

(*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1125-1127.)

MidValley contends that we may not consider any parole evidence because the ground lease was a completely integrated document, which the court found was not ambiguous. Based solely on the words of the ground lease, MidValley contends, regardless of whether the billboard was a fixture, that where the ground lease (1) devised the entire real property to MidValley and failed to carve out an exception for the six square feet where the billboard is located, (2) was silent about the billboard, and (3) required MidValley to pay taxes on the entire premises, the ground lease transferred to MidValley all rights to the billboard. MidValley's contentions are unavailing.

2. *The CNDA is dispositive on the issue of who is entitled to the rent from the billboard lease.*

Regardless of the trial court's interpretation of the ground lease and its conclusion that, as a fixture, the billboard was not transferred to MidValley, we conclude the court reached the correct result, albeit for an entirely different reason. "Because the trial court's judgment . . . is correct in result, it must be affirmed, irrespective of the considerations which may have moved the trial court to its conclusions. [Citation.] A decision correct in law ' "will not be disturbed on appeal merely because given for a wrong reason." ' [Citation.]" (*Little v. Los Angeles County Assessment Appeals Bds.* (2007) 155 Cal.App.4th 915, 925, fn. 6.) We hold that MidValley is estopped from arguing that the rents from the billboard lease belong to it.

The CNDA recites that Wichita is "*the lessor* under that certain Summit Media Outdoor Sign Lease, dated October 4, 2000, executed by Ground Lessor [Wichita] and Summit . . . (*the 'Billboard Lease'*)." (Italics added.) MidValley signed the CNDA and the contract was recorded. Evidence Code section 622 contains a conclusive presumption that the facts recited in a written instrument are

true as between the parties to the instrument.<sup>4</sup> (*Plaza Freeway Ltd. Partnership v. First Mountain Bank* (2000) 81 Cal.App.4th 616, 629, fn. 12.) *Plaza Freeway* held that when a tenant signs and delivers an estoppel certificate containing a recitation, the facts contained in the certificate are conclusively presumed to be true under section 622. (*Id.* at p. 629.) Applying *Plaza Freeway* and the presumption of section 622, we conclude that when MidValley signed, delivered, and recorded the CNDA, the facts contained therein became conclusively presumed to be true. MidValley is bound by those factual recitations (see *ibid.*) and is estopped to contradict the CNDA's recitation that Wichita is the lessor of the billboard. (*Ibid.*) Stated otherwise, paragraph C of the CNDA contains an admission by MidValley to which it is bound. Pursuant to section 622, Wichita is conclusively presumed to be the *lessor* under the billboard lease and therefore entitled to the rents accruing thereunder.

Notwithstanding MidValley's contention to the contrary, the parole evidence rule does not preclude our consideration of the CNDA, even though the ground lease is a fully integrated contract. (Code Civ. Proc., § 1856, subd. (a).) "Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any *prior* agreement or of a *contemporaneous oral agreement*." (*Ibid.*, italics added.) "The parole evidence rule precludes extrinsic evidence of *prior* or *contemporaneous* agreements that contradict, vary, or add to an integrated writing -- it does not relate to *future* agreements and does not bar extrinsic evidence that proves that the parties *subsequently* modified their *integrated* writing. [Citation.]" (*Beggerly v. Gbur* (1980) 112 Cal.App.3d 180, 188.) The CNDA is neither a prior agreement nor a contemporaneous oral

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<sup>4</sup> Evidence Code section 622 reads: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest; but this rule does not apply to the recital of a consideration."

contract, but an agreement entered into long after the ground lease and the billboard lease. Therefore, it may be considered together with the ground lease. By its own words, the ground lease transferred no rights with respect to the billboard lease from Wichita to MidValley. The CNDA confirms that fact or modifies the silent portion of the ground lease by recognizing as late as 2003 that Wichita was the lessor under the billboard lease.

On appeal, MidValley argues where the trial court found the ground lease was not ambiguous, it effectively excluded evidence, including the CNDA, as not pertinent and so Wichita may not rely on the CNDA. MidValley further argues that by failing to bring a cross-appeal, Wichita forfeited the right to challenge the court's exclusion of evidence. The contention is unavailing because Wichita was successful at trial and is not aggrieved by the judgment. (Code Civ. Proc., § 902.) Therefore, it did not need to file a cross-appeal. Wichita is free to urge affirmance of the judgment on grounds other than those cited by the trial court. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) What is more important, the court did not exclude the CNDA; it received and admitted the CNDA into evidence without any objection by MidValley. Therefore, we may consider the CNDA in aid of our task of interpreting the ground lease as a matter of law. (*Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 980 ["When no extrinsic evidence is introduced or the extrinsic evidence was not relied on by the trial court or is not in conflict, we independently construe the contract."].)

Our holding here is further supported by the course of conduct of the parties since the inception of the ground lease. Although the ground lease is silent about the billboard, the terms of a writing can "be explained or supplemented by course of dealing or usage of trade or by course of performance." (Code Civ. Proc., § 1856, subd. (c)<sup>5</sup>.) "A party's conduct *subsequent* to the formation of a

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<sup>5</sup> Subdivision (c) of section 1856 of Code of Civil Procedure reads: "The terms set forth in a writing described in subdivision (a) may be explained or supplemented by course of dealing or usage of trade or by course of performance."



contract may be looked upon to determine the meaning of disputed contractual terms. [Citations.] According to Witkin, ‘The conduct of the parties may be, in effect, a *practical construction* thereof, for they are probably least likely to be mistaken as to the intent.’ [Citation.]” (*Cedars-Sinai Medical Center v. Shewry, supra*, 137 Cal.App.4th at p. 983.) Here, Wichita has been collecting the rent under the billboard lease since it entered into that lease with Summit in 2000. In February 2002, MidValley succeeded to Aztec’s interest in the property with the billboard and the trial court did not find that MidValley claimed a right to the billboard rents or that Wichita demanded clarification of its right to the rents for the billboard. In August 2002, MidValley entered into the ground lease and neither party raised the issue of billboard rents. It appears that MidValley first demanded the income from the billboard lease in the fall of 2005. MidValley’s conduct demonstrates that it did not really expect to receive any benefit from the billboard lease.

DISPOSITION

The judgment is affirmed. Respondent is to recover costs on appeal.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.